THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO.12802 OF 1997

Dated: 05-12-2006

Between:

M/s Sagarmal Jewellers,
Gulzar House, Hyderabad,
Rep.by Saraswathi Bai … Petitioner

And

Babu Rao and two others …
Respondents

O R D E R:-

This writ petition has been filed questioning the order dated 06-12-1998, passed in S.A.No.1 of 1996, and also the order dated 06-11-1995, passed in S.E.No.15/93, by the third and second respondents respectively.

The 1st respondent-workman filed an application claiming certain amounts on account of notice pay, service compensation, leave encashment wages, bonus and variable dearness allowance. After conducting necessary enquiry, the primary authority has passed orders awarding a sum of Rs.8,050/- on account of notice pay, service compensation for the period of service rendered by him from 01.01.1986 to 05.07.1993 and also for un-availed leave for 60 days. In total, the petitioner was awarded Rs.8,050/-. Aggrieved by the order to the extent of disallowing his claim for variable dearness allowance, the petitioner filed an appeal under Section 53 of the A.P. Shops and Establishments Act, 1988 (for short 'the Act') before the second respondent-appellate authority. The appellate authority has awarded a total sum of Rs.17,460/- including the compensation awarded by the primary authority. In addition to the award of the primary authority, the appellate authority has awarded a sum of Rs.1,000/- as bonus under Section 51 of the Act and also Rs.7,260/- on account of variable

dearness allowance as per G.O.Ms.No.33 from 06.03.1991 to 01.04.1993.

In this case it is submitted by the learned counsel for the petitioner that though reference is made to G.O.Ms.No33, but no such document is filed either before the primary authority or before the appellate authority for claiming wages on account of the variable dearness allowance, but from a reading of the impugned orders, it appears that the said amount is not awarded on the ground that it will not constitute a wage within the meaning of 23 (2) of the Act. But however, it is to be noted that variable dearness allowance cannot be excluded from the definition of wage. In that view of the matter, I do not find any illegality in the award passed by the appellate authority under Section 53 of the Act.

In any event, the appellate authority, having considered the subject in detail, has awarded the compensation. Hence, I do not find any illegality in the impugned order, which warrants interference under Article 226 of the Constitution of India. At this stage, it is stated that half of the compensation awarded by the appellate authority has already been paid. In that view of the matter, the respondents are permitted to pay the balance amount within a period of six weeks from the date of this order.

Subject to above direction, the writ petition disposed of. No order as to costs.

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R.SUBHASH

REDDY, J.

Date: 05th December 2006.

PNV/MRR

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